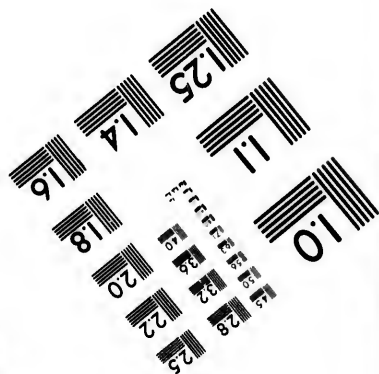
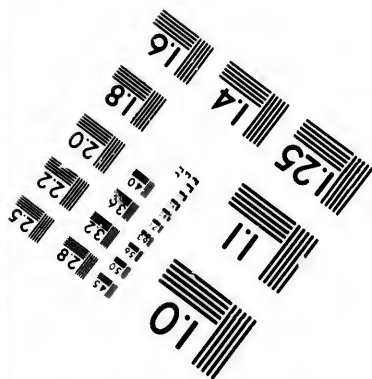
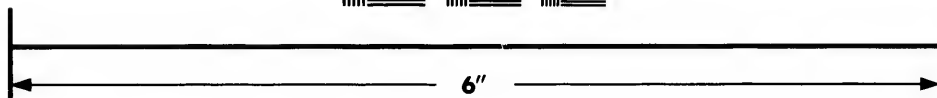
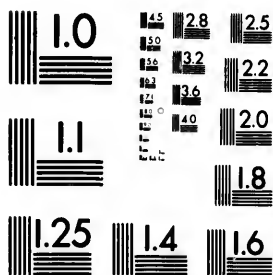


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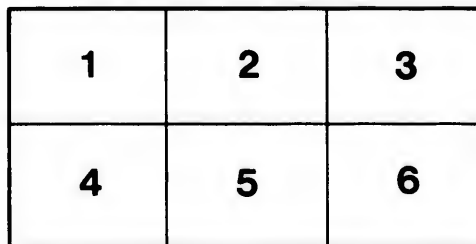
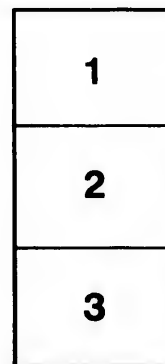
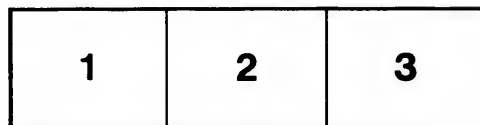
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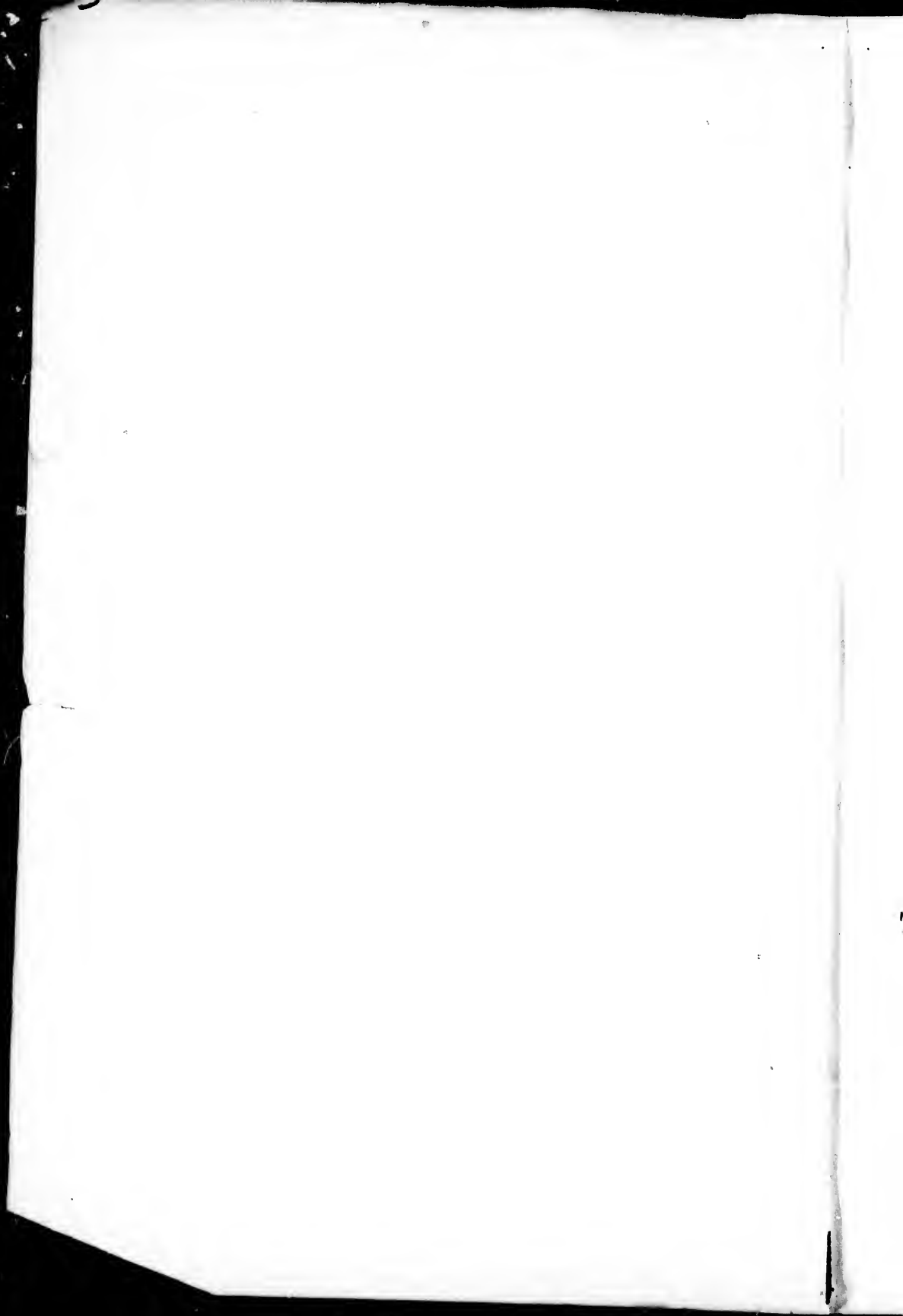
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CONTAINING FURTHER
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WITH
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FOR THE COLONIES ;
ALSO,
LEGAL OPINION
OF THE
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ON
MR. RYLAND'S CLAIM
UPON
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1879.

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Sir M. E. Hicks-Beach to The Marquis of Lorne.

DOWNING STREET, 4th February, 1879.

MY LORD,

With reference to previous correspondence respecting the case of Mr. Ryland, I have received two further letters from this Gentleman, copies of which are enclosed, dated respectively the 20th of August, and the 14th of January last.

I deferred my reply to the first of these communications as I understood that there was reason to hope that Mr. Ryland would accept an arrangement which the Earl of Dufferin had suggested; as however I have not learned that this arrangement has been carried out, I can only say, generally, that the application made to me by Mr. Ryland, appears to me, after full consideration, to be one which Her Majesty's Government cannot entertain.

Similar cases have from time to time arisen, in which a person originally appointed to an office in a colony, either by the Home Government, or while the colony was under the direct control of Her Majesty's Government, has supposed that he had on this account, some special claim upon its consideration.

It has however been explained to those persons, that no such claim can be recognized. When under an altered constitutional system, a colony passes under the control of a different administration, that administration steps into the place of the government which had preceded it, and inherits its rights and liabilities. It would not be right for Her Majesty's Government to form or express an opinion as to the validity of Mr. Ryland's claims, inasmuch as compensation, if due, could not properly be paid to him out of revenues raised from the people of this country, nor could Her Majesty's Government require the Dominion Government to make any such payment.

I cannot doubt that any Government or Legislature, or any Court of Justice in Canada would deal justly and equitably with a claim, of whatever nature, properly preferred by one of Her Majesty's subjects in Canada, on account of matters which have occurred in Canada, and I must decline to assume any responsibility in connection with this case.

I request that you will cause an answer to be returned to Mr. Ryland in the terms of this despatch, in reply to his letters of the 20th of August, and the 14th of January last.

I have, &c.

(Signed) M. E. HICKS-BEACH.

GOVERNMENT HOUSE,

OTTAWA, February 22nd, 1879.

SIR,

I am directed by His Excellency the Governor General, to enclose to you the accompanying copy of a despatch which he has received from the Right Honorable Sir M. E. Hicks-Beach, in reply to the communications which you have addressed to the Secretary of State for the Colonies, regarding the division of the Registration Division of the City of Montreal.

A copy of this despatch and of your letters have been referred to the Government of the Dominion, with whom, and the authorities of the Province of Quebec, the matter must now rest.

I have the honor to be,

Sir,

Your most obedient, humble servant,

F. DE WINTON, R.A.,

Governor General's Secretary.

G. H. RYLAND, Esq.

Montreal.

*His Excellency the Right Honourable the Marquis of Lorne, K.T., G.C.M.G.
Governor General.*

WARWICK HOUSE,

MONTREAL, 24th February, 1879.

MY LORD,

I have had the honour to receive through Major De Winton, a communication of a despatch from Sir Michael Hicks-Beach, dated the 4th February instant.

Dissenting entirely from all his arguments and conclusions and respectfully denying that there is a similar case to mine on record, I would simply remark that I was not as he pretends, in the position of one who had been appointed to a Colonial Office under ordinary circumstances. But in the position of one who was in the enjoyment and possession of an Imperial Office which under special promises from the crown he consented to surrender in order to facilitate an important measure of the national Senate.

And with all due respect to Her Majesty's Secretary of State for the Colonies, I maintain that a promise so made by the Imperial Crown to a British Subject, whether residing in a Colony or elsewhere in Her Majesty's Dominions, is binding on the Crown who gave it.

I shall not however further comment on the Secretary of State's singularly illogical despatch, to which it will be my duty at the proper moment to reply.

Fortunately a British Subject wherever he may reside cannot be deprived of his privilege to approach the foot of the Throne by Petition of right.

Ignoring then as I do in this matter the Local Government of Quebec, who for party purposes have been allowed to trample on the arrangement between the Imperial Crown and myself, and to whom Her Majesty's Secretary of State would now refer me for redress, I have made arrangements and retained Counsel to carry my case before the Judicial Committee of Her Majesty's Privy Council in England.

I have the honour to be,

My Lord,

With great respect,

Your Excellency's most obedient Servant,

(Signed) G. H. RYLAND. .

The Right Honorable Sir Michael Hicks-Beach, Secretary of State, &c., &c.

WARWICK HOUSE,

MONTREAL, 14th March, 1879.

SIR,

The Marquis of Lorne having communicated to me your despatch of the 4th February ultimo, it might perhaps suffice to forward to the Colonial Office, a copy of my official letter to him in acknowledgement, as shewing the course I am prepared to adopt to obtain from the Imperial Government, a measure of justice to which I am clearly entitled.

In order, however, that there may be no misconception on your part as to the exact relative position of the Crown and myself in this matter, I think it right to reply seriatim to arguments, to which I feel

satisfied you would not have had recourse had you been fully aware of the peculiar circumstances of my case.

In the first place Lord Dufferin never proposed any arrangement to me. But when it was too late, when, under a misconception of facts, he had omitted to take the simple step which would have secured my interests and maintained the honor of the Crown; feeling that he had inadvertently done a wrong, he naturally felt anxious to redress it, and with this view, consulted me as to the amount of compensation and the arrangement which would be satisfactory to me.

At that time for the sake of peace, I would, at a great sacrifice, have compounded. For some reason, however, which His Excellency might explain, the negotiation fell through.

I have since suffered severely, mentally and pecuniarily, and the terms to which I would then have consented would not satisfy me now.

Having thus disposed of the first part of your despatch, I now turn to the second, wherein you state that, "Similar cases have from time to time arisen in which a person originally appointed to an office in a Colony, either by the Home Government or while the Colony was under the direct control of Her Majesty's Government, has supposed that he had, upon this account, some special claim upon its consideration, &c., &c."

In reply, I would respectfully observe, that the hypothesis on which you have founded your argument does not rule or in any way apply in my case.

In the first place there is no "similar case" to mine on record, I was not an individual receiving an office under the circumstances you describe.

I was an Imperial Officer, paid out of Imperial funds, in the possession of a high and influential office, with a fixed income, which I might have retained.*

On public grounds, and under the solemn promises of the Imperial Crown, I was induced to surrender this office, and take in exchange an office of uncertain income and lower grade, receiving therewith a minimum and maximum guarantee, not only to protect me from loss but to insure the fulfilment of the promises so made to me.

I did not seek the arrangement. It was the Imperial Crown who required my Imperial Office, to give effect to an important measure of the National Senate.

* See Lord John Russell's despatch on this subject.

It was, in fact, part and parcel of the measure under which constitutional government was granted and established in Canada.

And here I owe it to the memory of Lord Sydenham to add, that there was no desire on the part of the Representative of the Crown to inveigle me, by false pretences, into an abandonment of vested rights, or to draw me into a leonine contract, under which the Crown would reap the whole benefit and I suffer the whole loss.

There was, on this head, mutual confidence between Her Majesty's Lord High Commissioner and myself.

There was no desire to evade or divide responsibility, but a perfect reliance on the promises of the Crown whether verbally or otherwise given.*

Lord Sydenham meant that the promises made to induce me to resign my Patent office, should be carried out in their full integrity. And on my part I consented to the arrangement in good faith, and in the same loyal spirit and reliance on the honour of the Imperial Crown.

That I have under the most trying circumstances loyally performed my share of the contract, to the lasting injury of my family, the loss of my estate, and the best portion of my life, is too well known and admitted to be now denied.

You have laid it down in your despatch, that "when under an altered Constitutional System a Colony passes under the control of a different administration, that administration steps into the place of the Government that had preceded it, and inherits its rights and liabilities."

This reasoning under ordinary circumstances might be admitted, and I should not be disposed to dispute its soundness, if in granting a new Constitution to a Colony there was a distinct condition attached to it to cover and compel the observances of previous Imperial promises and liabilities.

But in giving a new Constitution to Canada no such pledge was exacted, or condition imposed upon the Administration. And though for purposes of Political expediency, the Imperial Government may have vested in its Administration the power of doing away with or changing existing Official Establishments, the fact of the absence in my case of any such pledge or condition as I have mentioned, renders the Imperial Government, and the Imperial Government only, responsible to me, particularly as the Crown had the power through its Representative of arresting the measures for the spoliation of my office.

* See case of Sir Lionel Smith in letter from under Secretary Stephen, published by order of the House of Commons in 1841.

This I submit is the logical conclusion to which a Court of justice would arrive. *The I*

But if I read your despatch rightly I am given to understand that though the Government of England, and the Government of the Dominion of Canada are both undeniably the Government of the Queen, the promises of the Crown to me which would be binding in favour of a British Subject residing in England, is of no avail to me as a British Subject residing in a Colony under Constitutional Government, and that compensation could not possibly be extended to me out of revenues raised from the people of England. *SIR*
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This is a novel doctrine at variance with the preconceived notions of British Subjects, who have ever been taught to believe that wherever residing the OEGis of British justice was extended over them. *justic*
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But on this head, Sir, permit me to direct your attention to the fact, that the Imperial Government have already by the payment of a moiety of Chief Justice Carter's award, received by me under protest, admitted their liability and thereby given a confession of judgment, which in private life would be binding between man and man. *to ad*
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I will not however discuss this point further. My appeal is in the first place to the honour of the Crown, as morally and legally bound to fulfil its engagements.

You have referred to Courts of Justice in Canada, as likely to deal justly and equitably with this case, but you should be aware that there is no Court in Canada which can adjudicate in matters regarding Imperial Contracts.

There is but one Court for which I am preparing, but I still trust that after the explanations I have given, that you yourself will see the necessity of some decisive action on the part of Her Majesty's Government in my behalf.

In conclusion permit me to state that the whole case is comprised in two simple questions, viz : *Opin*

1st. Did I receive as admitted by Lord John Russell a promise from the Crown ?

2nd, Has that promise been fulfilled in its integrity ? *for lo*
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I have the honour to be,

Sir,

Your most obedient servant,

G. H. RYLAND. *" Mr*
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The Right Honorable Sir Michael Hicks-Beach, Secretary of State, &c., &c.

WARWICK HOUSE.

MONTREAL, 10th April, 1879.

SIR,

In connection with the last communication I had the honor to address to you, in reply to your despatch of the 4th February last, I herewith enclose a copy of the opinion of two of the highest legal authorities in Canada on my case.

As I cannot believe you have any desire to bar my appeal for justice, I would suggest that before involving me in a course of expensive litigation attending a Petition of Right, which cannot reflect credit on Her Majesty's Government in England or in Canada, you should refer the whole case, including the legal opinion of Messrs. Day & Badgley, to your Law Crown Officers for their consideration and report.

In venturing this suggestion, I beg to repeat that I am prepared to adopt any course which may be necessary to secure my right. But permit me to say, that I think it would be more in accordance with the proverbial liberality and honor of the Imperial Government, if the Law Crown Officers agree in the view of my case, taken after much consideration by the ex-Judges here, at once to liquidate a claim, the legality and justice of which is not denied.

I have the honor to be,

Sir,

Your most obedient servant,

G. H. RYLAND.

Opinion in the matter of the claim of GEORGE H. RYLAND, Esq., upon the Imperial Government.

Mr. Ryland claims from Her Majesty's Government compensation for loss suffered by him, in consequence of the operation of an Act of the Legislature of the Province of Quebec, 38 Vic., cap. 17, by which his office of Registrar was divided, and his official income greatly reduced.

The Pamphlet with which we have been furnished, entitled "Mr. Ryland's Case," contains a full statement of the nature and grounds of his claim, with copies of the documents upon which it rests.

As appears from these documents, he was at the time of the union of Upper and Lower Canada in 1840, and afterwards, the incumbent by Imperial appointment of the patent office of Registrar and Clerk of the Executive Council of Canada.

In 1841 Lord Sydenham, then Governor General of Canada, and invested also with special powers as Lord High Commissioner, for the purpose of effecting the union of the Provinces, among other arrangements relating to that object, obtained from Mr. Ryland the resignation of his office upon certain stipulated conditions, these conditions are set forth in two letters, to be found on pages 40 and 41, Appendix A, of the pamphlet.

The first of these is from Chief Secretary Murdoch, written by command of the Governor General, and dated 23rd August, 1841; the other written by Mr. Ryland in answer, and dated 3rd of September, of the same year. Mr. Ryland's claim is founded primarily upon these two letters.

He contends that the former of them contains an obligation on the part of the government to appoint him to the office of Registrar of Quebec, and to continue him in that office, and that this obligation is accompanied by two special guarantees, set forth in the letter.

The first of these guarantees is, that if the annual income from the office should at any time be less than £515, it should be made up by the government to that amount, which was declared in the letter to be one half of the average income of the office to be resigned, and also to be the amount which Mr. Ryland would be entitled to receive under the scale established by 4 and 5 William IV, c. 24, after 24 years service as his allowance, on retirement altogether from the public service.

The second guarantee which Mr. Ryland contends is contained in the letter of the Chief Secretary, is that if the emolument to be derived from the New Office should at any time be in excess of the sum of £515 such excess should belong to him.

With respect to the guarantee first mentioned no difficulty has occurred between the Claimant and the Imperial Government. The only question that has arisen being between that Government and the Government of Canada, as to which of them is ultimately liable to pay the deficiency of the £515, and this has been already adjusted.

The question now submitted arises upon the guarantee secondly mentioned, and relates to the excess of official emolument derivable from the office beyond the £515.

The letter of the Chief Secretary after disposing of the guarantee of the £515, goes on to say "should they" the emoluments "exceed that sum you will of course be entitled to the excess," Mr. Ryland in his answer, 3rd September, says, "in regard to the Registrarship of Quebec, I have to request that you will convey to his Excellency my acceptance of this office, with the perfect understanding that in the event of its not proving nearly equal in value to my appointment of Registrar and Clerk of the Executive Council, the sum guaranteed is not to be considered as compensation in full, either for the loss of that office or of my claim upon Government." to this letter there was no reply.

These two letters contain the agreement between the Governor General, H. M. Lord High Commissioner and Mr. Ryland, establishing the conditions of his resignation of the office then held by him, and upon which he afterwards resigned.

In accordance with this agreement Mr. Ryland was appointed to the office of Registrar of Quebec, for which by an arrangement subsequently made the Registrarship of the Registration Division of Montreal was substituted in 1845, this change was acquiesced in by him, and did not affect the obligations existing between the parties.*

He continued to hold his office from 1841 to 1875, during a large portion of that time, at least fifteen years, the receipts from it were very much less than the £515 guaranteed. The amount of the deficiency and how it was supplied appear in a Report of Chief Justice Carter, of New Brunswick, to whom the matter was referred by the Imperial Government with the consent of the Government of Canada.

That Report does not bear in its details upon the present question but it shews the admission by the Imperial Government of a direct liability, and also the disappointment and difficulties which the Claimant has already encountered in the prosecution of his rights.

From the year 1856 the office yielded an excess of £515, and from 1870 to 1875 it gave an annual return of £2,500. So far there was no breach of faith. The obligations of the Imperial Government, under the contract with Mr. Ryland, had been observed; but in the last of these years, 1875, the government of the Province of Quebec, without any necessity, or indeed any reason of public utility for so doing, thought fit, by Legislative enactment, to divide Mr. Ryland's office into three, assigning to him the least profitable division, and thus

* See Mr. Blake's Report, s. 8. p. 11.

reducing his official income to an amount not much if at all exceeding the £515.

Against this legislation Mr. Ryland seems to have taken all the steps of opposition in his power. He communicated his objections and claims to the authorities of the Province of Quebec, and also petitioned the Governor General to disallow the Bill, but without success.

The result is that he is despoiled of his right of incumbency in the office to which he was appointed, and of receiving the emoluments yielded by it.

These are the facts upon which Mr. Ryland founds his claim on the Imperial Government for compensation.

In forming an opinion upon it, the first point to be clearly understood is the precise meaning and effect of the two letters cited, and these seem to us to present no difficulty.

The first of these letters, in its legal effect, clearly contains an obligation by the government to appoint Mr. Ryland to the office of Registrar, and to secure to him a continuation in that office with the enjoyment of its income, and necessarily involves the ulterior obligation to compensate him for any loss he might suffer from the breach of the primary one. The terms of the letter of the Chief Secretary are as positive and unequivocal in this respect as in respect to the guarantee of the £515, and Mr. Ryland's guarded answer to that letter in which he declares that he accepted the new office with the "perfect understanding that in the event of its not proving nearly equal in value to his appointment of Registrar and Clerk of the Executive Council, the sum guaranteed is not to be considered as compensation in full either for the loss of that office or of his claim upon Government," fixes the agreement beyond controversy, and it does not appear that any doubt has been raised upon it. Indeed a very little consideration of Mr. Ryland's position at the time of the agreement in 1841, will make it manifest that the guarantee to continue him in office without interference with its emoluments was a substantive and essential inducement for his resignation.

He was then in the prime of life, and might have retired altogether from the public service, with a life pension of £515 and have devoted himself to other business. He really therefore would get nothing for his work in the new office until the official receipts

should exceed that sum. Thus he gave up the certainty of an income for life of £1035, with all the incidental advantages of his office for the £515 in certainty, and the expectation of large emoluments from the new office, which he was justified from his agreement with the Government in considering as secured to him in permanence.

It cannot be supposed that any man of ordinary intelligence would voluntarily relinquish an important office worth £1030 with duties familiar to him and comparatively easy of performance, for one of less dignity worth half that amount, involving more labour and more responsibility,—no Government could fairly make such a proposition to a public servant, unless therefore the guarantee contained in the letter of Chief Secretary Murdoch be carried out so as to secure to Mr. Ryland permanence in his office, and give him an opportunity of making up from its proceeds sufficient to indemnify him for what he lost by the exchange, he is placed in the position of having sacrificed £515 a year during his whole life time, without any consideration whatever.

This point being established it remains to be ascertained the extent of loss which has been suffered.

Mr. Ryland declares that of the three divisions into which his office was separated the poorest and least productive was left to him, and that instead of receiving an annual income of £2,500 he cannot expect that hereafter it will reach the sum of £550. Whether these or any other figures are adopted, the principle of compensation remains the same, and if the present case were submitted to the Courts of Law there would we think be an assessment of damages, sufficient to cover the diminution of income, and such other losses as could be shown to have been immediately caused by the action of the Quebec Government.

In dealing with this case the right of the Legislature of a Country to exercise its discretion in making such disposition and changes of its offices as the public interests may require is not questioned, we perfectly acquiesce in the views on that subject expressed by Mr. Blake, in his report, paragraphs 18, 19, 20, but the peculiarity of Mr. Ryland's case which is admitted in the report takes him entirely out of the operation of the ordinary rules, and places him in the position of one contracting party, claiming from the other the fulfilment of a conventional obligation. The question whether the Imperial or Canadian Government is ultimately liable for these damages is one which cannot be raised against the present Claimant, Mr. Ryland's whole negotiation was with the Representative of the

former Government, and from it alone he received the guarantee on which he relies.

The question was indeed settled by the reference by the Imperial Government of Mr. Ryland's first claim, to Chief Justice Carter.

It is also admitted by the resolutions in the House of Lords and by the despatch of Lord John Russell, to be found on pages 41 to 43 of the pamphlet, and finally by the payments by the Imperial Government of one half of the award of Chief Justice Carter, and the negotiations with the Government of Canada for the payment of the other half.

That the Government of Quebec ought in equity and common reason to be answerable for the injury it has caused by an act of manifest spoliation is undeniable ; but their liability to do so is not of the least use to Mr. Ryland.

The spirit which excluded from the law any provision for his indemnification is still dominant, and notwithstanding the terms of Lieutenant Governor Caron's letter there is little hope that any relief could be obtained from that quarter.

But even if the fact was not so, it is not for Mr. Ryland to seek redress from the Government of Quebec. He looks and is entitled to look to the party with whom his agreement was made, the Imperial Government ; leaving to that Government to deal with the immediate wrong-doer, the Government of Quebec.

There is another reason why Mr. Ryland should adhere to his right of claim against the Imperial Government.

The Act of the Legislature of Quebec, might have been disallowed by Her Majesty's Representative the Governor General.

It was forcibly urged upon him to disallow the Act, and the exhaustive and able report of the Minister of Justice, Mr. Blake, shews abundance of reason for such a course.

It is much to be regretted that the conclusion arrived at in that gentleman's first report had not been acted upon.

There is nothing contained in the statement of the Lieutenant Governor of Quebec, which ought to have prevented a disallowance. He was in error as to the facts, and the whole tenor of his letter shews that he was very imperfectly if at all acquainted with Mr. Ryland's position, and the nature of his claim.

To any one conversant with the history of the Law, and with the temper of the governing party towards him the Lieutenant

Governor's assurance of the disposition of the Quebec Government to do him full and entire justice, reads more like the language of irony than of sedate official statement.

In addition to the reasons assigned in Mr. Blake's first report for disallowing the Act of the Quebec Legislature, it may be urged that that Act was a direct and manifest violation of the guarantee, given by the Imperial Government, and in fact involved that Government in a breach of faith.

The disallowance of the Act would have prevented the present difficulty, by which Mr. Ryland is again forced into the embarrassment and loss against which he ought to have been protected, and for which he now looks for redress.

We are of opinion that in Law, and upon the broadest grounds of equity he is entitled to such redress from the Imperial Government.

CHS. D. DAY.

W. BADGLEY.